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7 August 1953

LEGAL ADVISER

AUG 18 1953

DEPARTMENT OF STATE

The Honorable John Foster Dulles,
Secretary of State,
Washington, D. C.

Dear Mr Secretary:

The American lawyers practicing in Japan--of whom there have been fifty-five of us licensed by the Supreme Court of Japan--together with the other professional groups and their client, the American business-community here, have been and are much perturbed by the course of events in connection with the Japanese-American Treaty of Friendship, Commerce and Navigation and its ratification with reservations by the Senate. We have heretofore pointed out on several occasions what is regarded by the American community here as the gravity of the situation which would result if the United States took action having the effect of leading to the barring from practice here of American lawyers, doctors, accountants and other professional men. Without here restating those views in extenso, I refer to the letter on the subject sent by the American Chamber of Commerce in Japan to Senator Wiley, Chairman of the Senate Foreign Relations Committee, a copy of which is enclosed.

It now appears that our apprehensions were justified, and that in view of the reservation attached by the Senate to the "professions-clause" of the Treaty, the Japanese Government is--quite naturally--moving to retaliate against the American professional men in Japan. Wholly aside from the personal interest of us professional men in being permitted to continue the practice of our professions and to enjoy the positions which we have built up by our investments of time, effort and money, we feel that the effect on the general American position in Japan--and accordingly,

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BEN BRUCE BLAKENEY

HON. JOHN FOSTER DULLES

7 August 1953

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in a long view, on Japanese-American relations in every sphere--of our expulsion would be exceedingly unfortunate or even disastrous. We feel, rightly or otherwise, that this aspect of the matter has never received adequate consideration by the proponents of the movement to emasculate the professions-clause of the Treaty, and that in exchange for a wholly illusory advantage--of preserving the professions in America from a non-existent threat from foreign practitioners--they would sacrifice a substantial American interest in Japan.

On behalf of the American legal, medical and other professions in Japan, I wish most respectfully to urge that the Department of State and the Government of the United States take steps to avert the grave consequences which we have prophesied and which are now clearly adumbrated if the matter is left in the condition in which it now is. We urge that--whether by the returning of the Treaty to the Senate for reconsideration, by the President's declining to execute the instrument of ratification, or by other means of rectification in your judgment appropriate--steps be taken to rectify the present situation.

Respectfully,

Ben Bruce Blakeney

BBB:mb

* Enclosure

THE AMERICAN CHAMBER OF COMMERCE IN JAPAN
Sanshin Building, Yuraku-cho, Chiyoda-ku
Tokyo.

July 17, 1953

Office of the President

The Honorable Alexander Wiley
Chairman, Foreign Relations Committee
The United States Senate
Washington 25, D. C.

My dear Senator:

THE AMERICAN CHAMBER OF COMMERCE IN JAPAN, representing the American community here, naturally is very much interested in the Treaty of Friendship, Commerce and Navigation between the United States and Japan, now pending before your Committee. The Chamber especially is concerned over the reports that opposition has been voiced to the so-called professions clause of the Treaty (Article VIII), and that the proposal has been made that the Senate should give its advice and consent to the Treaty only upon condition of reservation or modification of that clause. We believe that those expressing such opposition have failed to take into account the important American interests involved in Japan, and we wish to call to the attention of your Committee certain facts and considerations which we feel to be of cardinal importance to it in deliberating upon this question. We cabled to you today the substance of our views on this matter, which is more fully set out herein.

It is unnecessary to dwell upon the importance of American private enterprise in foreign lands to the United States, for the national policy clearly encourages and promotes such enterprise. Accordingly, we have in Japan an American community -- leaving aside any question of the Security Forces -- consisting of some 9,000 American citizens; American investments in Japan today approximate \$450,000,000; and Japanese-American trade annually reaches the proportions of \$1,000,000,000. This American enterprise in Japan would be gravely handicapped -- it is, indeed, not too much to say that it could hardly continue to function -- if the American business community were deprived of access to the professional services of lawyers, doctors, architects and engineers, teachers, accountants and other technical personnel of all sorts; and not only the business community in Japan, but every American enterprise in America which invests capital, or otherwise deals with Japan, is likely at some time to require such professional services, or some of them. We may here include also the American Security Forces stationed in Japan; the services rendered to whom by the American professional men are by no means negligible; we may refer particularly to the services of American lawyers to personnel of the Security Forces in their private legal problems, which may well come to be of even greater moment in view of the current Japanese request for the right to exercise jurisdiction as in the case of the NATO countries over our servicemen.

To date we have had in Japan 55 American lawyers licensed by the Supreme Court of Japan to engage in practice for the benefit of American interests; there are 32 American doctors and dentists licensed by the Ministry of Welfare of Japan, and a considerable number of nurses; 10 architects and engineers;

over 200 teachers; and some 400 technical personnel of other types. The services of these professional men, it must be emphasized, are vital to the preservation and functioning of American commercial, industrial and financial interests in Japan; if the American businessman of today cannot operate in the United States without the services of-- for example -- a lawyer or an accountant, it readily will be conceived how much greater is the need for the services of these professions when American enterprise is operating in a foreign country, subject to strange systems of law, accounting and taxation. That the services of these professions are essential to protection of the persons and liberties of American citizens in Japan, now and in the future, goes without saying.

These American professional men and women have been licensed by the Japanese Government, many of them long before the execution of the Treaty of Peace of San Francisco in recognition of the need of their services for the promotion of the mutual interests of the two countries. They have been licensed and permitted to practice their professions on generous terms without any requirements of reciprocity or of citizenship, simply upon compliance with the prescribed standards of good character and professional competence; and, as we have said, the present extent of American enterprise in Japan could not have been attained without their services. The pending treaty proposes only to recognize the right of citizens of either of the two countries to practice their professions in the other, with no bar on the ground of alienage. It is of course, not suggested that any such profession may be practiced in either country without compliance with the other standards prescribed by the nation -- which in the United States means by the States respectively -- for such practice; the American wishing to practice medicine in Japan must still demonstrate his qualifications by submitting to such examination as may be prescribed for the practice of medicine in general, the Japanese wishing to practice law in New York must still satisfy the requirements of New York as to residence, good moral character and satisfactory passing of the bar examination. The professions clause of the pending treaty, in short, merely provides that alienage in itself shall not constitute a bar to such practice, leaving otherwise unaltered the respective nations' full control and regulation of the professions.

It is our understanding that the objection to this clause is grounded on the fact that it would, if it became effective, supersede the very common existing State laws prescribing American citizenship as one of the qualifications for practice of the professions. That it would do so is of course clear, just as any treaty made under the authority of the United States does supersede State laws inconsistent with it. We are unable to believe that such a result threatens any American State with the flooding of its legal, medical, dental, engineering or other professional professions with Japanese practitioners; it may in fact confidently be asserted that the number of Japanese lawyers, doctors or accountants who could or would undertake to practice in the United States with the bar of alienage removed would be no greater than the number who have done so in the past -- which is infinitesimal, if not nil. Perhaps the best proof of this prophecy is the experience of the thirty years since, as we understand it, this standard professions clause first began to be incorporated in all of the United States' treaties of friendship, commerce and navigation; we have no knowledge of the materialization of any of the dangers apprehended by the opponents of this provision, and believe it quite safe to assert that no such result has ever come about. We wonder a little, too, it may be said, whether

the traditional American self-reliance and spirit of free enterprise have undergone an eclipse which leaves the American people fearful in the face of competition, even were it a real and not an imaginary competition.

We regard the question raised on the basis of the professions clause of this Treaty as therefore possessing no practical importance whatsoever, so far as concerns any threat to the professions or the structure of the society of the United States. So far as concerns the American professional men practicing in Japan, however, and especially their client, the American business, financial and military community, it is easy to foresee practical consequences of the most disastrous nature which would in all probability ensue upon a rejection by the Senate of the clause. Retaliation by Japan, in the form of barring the American citizen here from practice of his profession, would be a sequel highly natural and, it cannot be denied, logical -- logical because the Japanese people, a proud and self-conscious people, could interpret only as a gratuitous insult to them the taking by the United States Senate of this action from which no practical benefit could in any point of view be expected to result to the United States. We need not repeat that the effect of such retaliation and the consequent deprivation of the American community of these services would be catastrophic to American interests in Japan. It might be pointed out also that the field would then be left open, and the opportunities of trade, commerce, and international intercourse generally would be abandoned, to such other nations as did not, by practicing discrimination against Japan, invite her retaliation -- for example, Great Britain has long admitted Japanese lawyers to her bar (though no instance is known of a Japanese lawyer's having undertaken to practice in England), and British lawyers could accordingly be expected to continue to be welcomed at the Japanese bar.

Aside from the direct effect on American enterprise, physically present in or dealing directly with Japan, of such a condition, it is easy to foresee other consequences which would even more fundamentally affect Japanese-American relations. The United States stands today as the leading champion in the world of international goodwill, mutual respect among peoples and nations, and freedom of opportunity for all. In Japan -- at least -- opinion is predominantly pro-American because of the belief that America means what she says concerning these matters. The rejection by the Senate of the United States of a treaty-provision on the only discoverable ground, that the United States is not willing to accord to Japanese citizens even on a basis of reciprocity that which Japan has voluntarily and unilaterally accorded to American citizens, and in circumstances in which that action secured to the United States no practical benefit and could seem only a gratuitous affront to Japanese pride, obviously can have no other effect on mutual relations but a bad one. It would be superfluous here to refer to 1924 and the enactment of the Oriental Exclusion Act; another such incident would be interpreted, as was that one, as an insult to a friendly nation and as an act of nationalism of the type of which the United States is the staunch opponent throughout the world. By this the friends of America in Japan and the advocates of an American orientation for Japan would be disarmed, and would be able only to stand mute before the charge that the United States' professions were insincere and to be abandoned whenever self-interest so dictated. The enemies of America in Japan, whether communist or ultra-nationalist, would at the same time be provided with a weapon of unquestionable power for the conduct of their campaign to instill into the Japanese people hatred, fear and distrust of America; and it is impossible to foresee what damage might not be done to American prestige in Japan and throughout the Orient generally. Indeed, though we have spoken of Japan, the same condition would no doubt result elsewhere throughout the world.

It is therefore the considered view of THE AMERICAN CHAMBER OF COMMERCE IN JAPAN that rejection by the Senate of the professions clause in the pending Treaty would be a mistake which would immediately affect gravely Japanese-American relations of commerce, industry, and friendship, and would threaten disaster eventually to the whole American national standing vis-a-vis not only Japan but all nations in which the struggle between freedom and slavery is being or is yet to be fought. We strongly urge the Committee to approve, and the Senate to ratify, the Treaty without any reservation which would eliminate or render nugatory the professions clause, as executed.

Very truly yours,

THE AMERICAN CHAMBER OF COMMERCE
IN JAPAN

/s/ Elmer E. Welty
President

53-120

September 9 1953

In reply refer to
CP

611.944/8-753

Dear Mr. Blakeney:

The Secretary referred to me
~~Examine~~ your letter of August 7 relative to the treaty of
friendship, commerce and navigation with Japan, and to possible
measures you suggest might be taken with a view to ameliorating
the unfavorable effects which it is feared the Senate reserva-
tion may have on the status of American nationals engaged in
the practice of professions in Japan.

The officers of this Department and of our Embassy who had
a part in the negotiation of this treaty were keenly conscious
of the situation you mention and accordingly, as you know,
endeavored to secure in the treaty suitable protection for
Americans engaged in the practice of professions in Japan, on a
reciprocal basis and in conformity with precedents established
by earlier United States treaties. The Senate concluded,
however, for reasons which in its judgment appeared controlling,
that the reservation was necessary as a matter of general
policy.

The Senate's decision to adopt the reservation was taken
after the question of the professions clause had been under
consideration in that body for over a year. The issue of the
continued acceptability of the rule represented by Article VIII
(2) of the Japanese treaty was raised in May 1952 before both
the Judiciary and the Foreign Relations Committees of the Senate,
the former in connection with hearings on the so-called Bricker
resolution for a constitutional amendment concerning the treaty
power and the latter in connection with certain commercial

treaties

Mr. Ben Bruce Blakeney,
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treaties with countries other than Japan. During the period between that time and the final Senate action on July 21 of this year, the Senators were able to receive the views of interested parties; and it is understood that a number of communications on the subject, especially from various State boards of bar examiners and others opposed to the clause, did come in to the Senate. This Department presented the case for the professions clause to the best of its ability, both formally and in informal consultations. But now that the Senate has reached its deliberate decision, this Department is bound to respect it and may not, in my opinion, appropriately ask the President to withhold ratification for the purpose of requesting Senate reconsideration.

The Department of course remains much interested in doing what it can diplomatically, in the circumstances, to protect responsible American professional interests in Japan. The reservation does not of itself exclude or cause the exclusion of any person from a profession. It leaves the rights of persons to practice the professions in substantially the same situation as has existed in the absence of the treaty, neither improving substantially nor impairing their legal position. It is therefore not thought that a refusal on the part of the United States to proceed with bringing the treaty into force in normal course would benefit American interests in Japan. Such a refusal might rather tend to exacerbate the situation, and to jeopardize the many advantages the treaty in general affords as well as any disposition the Japanese Government might have to refrain from actually exercising its full rights with respect to restricting the practice of professions by American nationals.

The Japanese Government has already refrained from demanding a reservation on its behalf as extensive as that which will be applicable in the United States. That is, pursuant to the exchange of notes of August 29 the Japanese reservation is confined to the right, to the extent the Japanese Government sees fit to exercise the same, to restrict Americans to the extent only to which the several States restrict Japanese nationals. Hence, notwithstanding the Senate reservation, Japan will not in any event be entitled to apply an alienage bar to an American national whose license to practice his profession in the United States was obtained in a State that does not apply an alienage bar to Japanese nationals in respect of that profession. The primary decision affecting the treaty rights of American professional men in Japan will thus in reality be made by the several States of this country.

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It is not yet known just what policy the Japanese Government intends to follow under the treaty with respect to the matter in question; but it is hoped that no precipitate or drastic action adverse to established American interests is contemplated. Our Embassy at Tokyo will keep in touch with developments and will, as occasion warrants, undoubtedly invite the Japanese Government's attention to such considerations as may with propriety be suggested to the government of a sovereign country with which the United States enjoys friendly relations.

Enclosed as of possible interest is a copy of the report of the Senate Foreign Relations Committee on the treaty and an excerpt from the Congressional Record of July 21, both of which contain material bearing on the Senate's views with respect to the professions clause.

Sincerely yours,

Samuel C. Naught
Assistant Secretary

Enclosures:

1. Copy of report of the Senate Foreign Relations Committee on the treaty.
2. Excerpt from the Congressional Record of July 21.

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NA old Mr. ...
Mr. White
8/28

DEPARTMENT OF STATE

THE LEGAL ADVISER

9/4

To L - Mr Phleger

Mr Waugh thinks
you ought to see this.
I worked on it and have
changed it.

DMetzger

Ok HP

DEPARTMENT OF STATE
THE LEGAL ADVISER

8/18

To CP - Mr Setzer

FE has passed to
us, but I should think
Mr Waugh would sign a
reply. Have there been
others of same? If you
would like, I can draft,
but, as you know, think
replies should be embodied.

Stedinger

DEPARTMENT OF STATE
OFFICE OF THE SECRETARY

August 11, 1953

FE
Through S/S *W*

Please draft appropriate answer for
the Secretary.

RLO'Connor

Letter and enclosure from
Ben Bruce Blakeney, Tokyo,
August 7, 1953 re Japanese-American
Treaty of Friendship, Commerce and
Navigation

